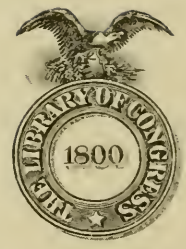
James A. Stewart

Speech on the admission of Kansas, march 20, 1858



SPEECH

OF

HON. JAMES A. STEWART,

OF MARYLAND,

ON THE

ADMISSION OF KANSAS.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MARCH 20, 1858.

The House being in Committee of the Whole on the state of the Union—

Mr. STEWART said:

Mr. CHAIRMAN: This Kansas question is important in itself. It is also connected, in the course of the arguments pursued here, with many other considerations which give to it an importance that is not ordinarily bestowed on questions coming up for decision by the Congress of the United States. I desire, before the vote be taken on the question of the admission of Kansas into the Union, to present my views upon the subject. I am glad, therefore, that I now have the opportunity to explain to this body, to the people whom I have the honor to represent, and to the country, if you please, the reasons which will control me in the vote which I propose to give when the question comes up legitimately.

I have the honor to represent, in part, the State of Maryland. The district which I represent is not affected by many of the considerations which control other sections. It is a quiet, beautiful section of country. All that the people there desire, in the movements of this great Government, is, that it will keep within constitutional limits; that the rights of all sections may be preserved; that aggression shall not be allowed from any quarter—neither from the South upon the North, nor from the North upon the South—but that the Government may move along in the path prescribed for it by the great charter that holds together the liberties of the people of this country.

Now, sir, Kansas has applied for admission into this Union. I take it for granted—because, I believe, it has not been questioned or denied from any quarter—that it is the will of the people of that unfortunate Territory that Kansas may be incorporated into the Union as one of the States.

The only question that embarrasses, is as to the method—the *modus operandi*, if you please. Well, sir, what is to be done? How are we to act? We are obliged either to admit Kansas or to reject her. It has been said that fraud exists, and has existed, in the proceedings of Kansas. Well, sir, we are obliged to affirm or disaffirm it. If we reject her, we take the responsibility of saying that there have been such frauds, such malpractices, in the proceedings of Kansas, as to justify us in refusing to admit her into the Union. I present this view to the gentlemen who are willing to assume the responsibility of refusing to admit Kansas into the Union. There is no dodging the question. We must either, by voting for the admission of Kansas, affirm the regularity and correctness of the proceedings there, or, by voting against her, affirm that such frauds and irregularities have existed, and do exist, as justify us in rejecting her.

Now, I ask the men who go for law and order, for regularity in the movements of this Government in all its dependencies, has anything existed in the proceedings of the Territory of Kansas sufficient to justify us in refusing her admission? I go back to the election of her first Legislature. Who had the right to decide who were the legally-elected members of that Legislature? That Territorial Legislature had the right to decide for itself upon all questions of contested elections, and no outside authority could interfere. We have the authority of the distinguished gentleman who was architect of the organic act of that Territory, that the proceedings of that Legislature were regular and legal; that the Territorial Legislature elected in March, 1855, was in this respect unexceptionable. And I think the authority of that gentleman is conclusive upon that point so far.

To follow up these proceedings, you find the people of Kansas in convention assembled. In deciding upon the regularity of this body, you must look at its origin, and take it in all its stages. I ask gentlemen who are opposed to the admission of Kansas into the Union, at what period of the proceedings of that body were fatal irregularities? The first Legislature, I have shown, was regular and legal. They decided in relation to the election, returns, and qualifications of their own members. Who had the right to determine in regard to the legality of the elections of the members of the convention? Why, the convention itself. It would be a gross usurpation for the Congress of the United States to under-

McGILL, print.

take to decide who were the legally-elected members of that convention. They had the right to decide the question for themselves. They did decide it. They adopted a constitution. How does that constitution appear here for our action upon it? The President of the United States, by the request of the president of that convention, has sent his message to the House of Representatives, and to the Senate of the United States, conveying intelligence to us that this constitution has been adopted by the State or Territory of Kansas. We have the authority of the Administration, therefore, so far as the facts were in its possession, that the proceedings have been regular, and that the constitution here presented is such as properly to justify us in admitting the State.

Now, the question which any plain common-sense man would naturally ask is, what interest had the President of the United States in recommending the admission of Kansas under this constitution? What interest had the members of his Cabinet? Why do they recommend to the Congress of the United States the admission of Kansas under this constitution? Has Mr. Buchanan any personal object to accomplish? It has been announced by himself, it has been reiterated by his friends, that having reached the highest point of his earthly desires, he is no longer before the country for any additional honors, further than may be bestowed in the fair discharge of his duty. The desire of his ambition, I suppose, is accomplished, and he is not a candidate for re-election. Here, then, is the President of the United States, entirely disinterested in his motives, coming from the northern State of Pennsylvania, recommending the admission of Kansas. I speak with no degree of deference to the opinion of Mr. Buchanan more than I would of any other man under like circumstances, occupying a similar position. I think his opinion, certainly, in this view, is entitled to some consideration.

But if gentlemen attempt to set aside the proceedings of the Territorial Legislature as illegal, what comes of the legislation, which is the work of that body? Marriages have been solemnized, estates have been administered, under laws enacted by that Legislature. Is there any member of this House, I do not care to what party he belongs, who will undertake to say that the whole proceedings which have taken place under the authority of the government of that unfortunate Territory are illegal? Oh no, I apprehend not.

But we are met with two classes of objectors. One class—the Black Republicans—affirm that the whole government was founded in fraud; that the public sentiment there was overruled or perverted by border ruffianism from Missouri——

Mr. HUGHES. I ask the gentleman from Maryland to yield the floor for a moment.

Mr. STEWART. Yes, sir.

Mr. HUGHES. I understand my colleague [Mr. KILGORE] to represent himself to the House as an old Whig, and as standing upon the platform of Henry Clay. I wish merely to read what he has heretofore said in reference to the fugitive slave law, a measure with which I believe Henry Clay had some connection, in order that it may be understood what kind of an old Whig he is. I read from the debates of the Indiana constitutional convention.

"In the discussion of the propriety of referring this section, no gentleman had as yet been found willing to take upon himself the advocacy of the odious fugitive slave law, which, since its recent passage, had created so much excitement, and upon which, in connection with this section, he desired to speak briefly.

"He would remark here that he did not wish to be misunderstood in what he should have to say upon this subject of the fugitive slave bill, so intimately connected with the section then under consideration. He was not in favor of repudiating the fugitive slave law while it remained on their national statute-book. Black and odious as it was, he had no objection to its enforcement, provided the officers of justice could carry into execution its provisions. The principle of the bill—the recapture of the slave by the master—he would not controvert; it was the details of it that were odious in his estimation. It would be the proudest hour in his life, if he should have to surrender his property and personal liberty by a refusal to obey the mandates of an officer who should attempt, in this land of freedom, to carry out those details. While he was willing, as he before said, to see the law carried out, if it could be—although he would not himself assist in its execution—he hoped no gentleman of any party would, during their deliberations here, become the advocate of so odious a measure. He was no Abolitionist. He was under as little obligation to that party as any gentleman on that floor; but while he repudiated all connection or fraternity whatever with that class of their fellow-citizens, so far as their peculiar action was concerned, he must be permitted to enter his protest against the doctrine that the slaveholders of Kentucky and other Southern States had the right to use the freemen of Indiana like blood-hounds to catch their slaves."

I merely read this in order that it may go before the world in connection with the statement of my colleague, that he speaks as national Whig. I will not trespass upon the indulgence of the gentleman from Maryland, or I could strengthen the point which I make against my colleague by some other and stronger proofs.

One word more. I understand my colleague to say that he is opposed to the admission of Kansas as a slave State because of the repeal of the Missouri compromise. Here is the resolution of the Republican State convention of Indiana, of 1856, of which my colleague was a member, and upon which his party made the canvass of 1856:

"*Resolved*, That we will resist, by all proper means, the admission of any slave State into this Union formed out of the territories secured to freedom by the Missouri compromise, *or otherwise*."

Mr. KILGORE. Will the gentleman from Maryland permit me to ask my colleague a question?

Mr. STEWART, of Maryland. Certainly.

Mr. KILGORE. Has not my colleague said, ever since the commencement of this session, that the Dred Scott decision was not the law, and that nobody could pretend that it was the law?

Mr. HUGHES. I do not think that I ever uttered such a sentiment in my life.

Mr. KILGORE. At no time?

Mr. HUGHES. I do not think I ever did at any time. I know that the gentleman's party charged me, during the last canvass, as being in favor of white slavery. They made the charge distinctly.

Mr. STEWART, of Maryland. I presume, Mr. Chairman, it is best for me to go on with my remarks, and these gentlemen can adjust their dispute in their own way when they get home, subject only to the Constitution of the United States. [Laughter.]

Now, sir, I repeat, in reference to the admission of Kansas, we are met with two objections. I understand that the gentlemen who follow the fortunes of the distinguished Senator from Illinois, [Judge DOUGLAS,] take the ground that everything was regular in the proceedings in Kansas, or sufficiently so as not to authorize any legitimate complaint; but they say that this constitution has not been submitted to the people, or is not an embodiment of the will of the people. The other objectors take the ground that the whole government in Kansas was founded in fraud. We are confronted, therefore, with these two objections.

Well, sir, in relation to the admission of a State into the Union, we find under the Constitution of the United States that *Congress* has the power to admit new States. I hold that it is not the primary consideration whether a people proposing to be admitted have a constitution or not. The great question here is whether we shall admit Kansas into the Union. The Constitution of the United States does not say that when a State is admitted into the Union that she shall have a constitution; and you do not find in the clause authorizing Congress to admit new States, anything said about a form of government. In another clause you find the language, that the *United States* shall guaranty to every State a republican form of government. It is not *Congress*, but the *United States*. It does not say that the *United States* shall admit new States into the Union, and the *Congress* shall guaranty the States a republican form of government, but that *Congress* shall admit new States, and the *United States* shall guaranty to the States republican forms of government. Now, when Kansas comes here is she compelled, as a preliminary, to have a republican form of government? How can you guaranty this until she is in? It seems to me to be untenable to require that when a State comes in she should necessarily have a republican form of government, because she must first be admitted as a State before you can guaranty to her a republican form of government. The word "guaranty" is one of peculiar import. It does not say that the State shall have a republican form of government before admission; but that the United States shall guaranty a republican form of government. Rhode Island came into the Union under the British charter; and she did not determine for a considerable time after the adoption of the Constitution of the United States, whether she would come into the Union or not. When she came in no question was asked as to her constitution. She had not a republican constitution when she came into the Union, according to our theory. She had not a constitution of that form, because she was living under the charter which she had derived from King Charles II. I therefore hold that it is not absolutely material whether a State, when she comes into the Union, has a constitution or not. She may, in fact, have a republican form of government without a constitution. She may settle all her proceedings in mass convention or in a Legislative Assembly.

Now, sir, States which have come into the Union have been admitted in different ways. There is no particular plan or method required. Some have been admitted by joint resolution, as was the case with Indiana. Some have been introduced by an act of Congress, express and direct, and others have been admitted by necessary implication. Ohio was never admitted formally by an act of Congress; but Congress, in the passage of a law, recognized her by reciting in the act, substantially, that she was in the Union.

Vermont was the first new State admitted into the Union, which occurred on the 18th of February, 1791. Congress required no constitution, and none was submitted by her.

Kentucky, being the second new State, was admitted on the 1st of June, 1792. Her constitution was never submitted to Congress.

Tennessee was the third new State. She formed her constitution the 6th of February, 1796, and the same was submitted to Congress.

Ohio was the next. Having formed her constitution on the 29th of November, 1802, in February, 1803, an act of Congress was passed providing for the due execution of the laws of the United States within the State of Ohio, and merely reciting that she had become a State of the Union. Congress had nothing to do with her Constitution, and she became a State by necessary implication, as I have before stated.

Louisiana, on the 7th of April, 1812, was admitted into the Union by act of Congress.

Indiana came in on the 11th December, 1816, by a joint resolution, as before mentioned, having adopted her constitution on the 20th June, 1816. The State of Rhode Island con-

tinued for a long time without any constitution, having for her form of government simply the charter from King Charles II., and for a considerable period declined to adopt the Federal Constitution, and, when she came in, no question was made as to the character of her government. General Washington, President of the United States, on the 1st of June, 1790, congratulated Congress upon the introduction of Rhode Island in the following manner:

UNITED STATES, *June* 1, 1790.

Gentlemen of the Senate and House of Representatives: Having received official information of the accession of the State of Rhode Island and Providence Plantations to the Constitution of the United States, I take the earliest opportunity of communicating the same to you, with my congratulations on this happy event, which unites under the General Government all the States which were originally confederated; and have directed my secretary to lay before you a copy of the letter of the president of the convention of the State of Rhode Island to the President of the United States. GEORGE WASHINGTON.

It will be observed that it was the president of the convention that communicated with President Washington, as the president of the Kansas convention now, I will remark to the gentleman from New York, [Mr. CLARK.]

There does not appear to have been much consideration as to the character of the constitutions of the new States, or whether they had any or not, or as to the method of admission, until Missouri made her application. She was admitted, after long and angry controversy, and a restriction was adopted as to the admission of any future State lying north of 36° 30′, undertaking to prohibit the introduction of slavery. This was in restraint of their indefeasible right under the Constitution, producing inequality of privilege. After an experience of thirty years it was discovered to have no solid foundation, and was ignored by the general adjustment of 1850, and repealed formally by the Kansas-Nebraska act of 1854, and pronounced to be unconstitutional by the Supreme Court of the United States in the Dred Scott case. In its place, the policy was inaugurated to submit the settlement of the slavery question, as indeed all other domestic questions, to the respective people of each Territory, when they regularly undertook to establish State governments. This plan fully maintained the equality of the States, and disposed of the slavery question, fairly, and without subjecting any State or section to disparagement or injustice.

We find, then, from the history of the Government and from precedent, that there has been no particular form of admission adopted. Some have been ushered in by act of Congress, one by joint resolution, and another by necessary implication. I hold, therefore, that the main question which is to govern Congress when they undertake to admit a new State into the Union is, not to assume with great nicety to look into and see what sort of a constitution she has. It is not to be expected that these territorial governments will settle all matters with the same precision as you would solve a mathematical proposition. The leading inquiries are, have they sufficient numbers and the ability to assume and maintain an independent government? If they have, you admit them into the Union. As to the question whether they have a constitution or not, it is secondary and subordinate, and is a matter more of form than substance. In the case of Rhode Island, about the Dorr rebellion, as it was called, before the Supreme Court, there being a dispute as to which government had the control, the old or the new, it was decided to be a political question, and they would not, *per se*, undertake to settle it. The President and the Congress of the United States, under some circumstances, have to decide such questions. It would seem we take cognizance of the case not so much with the view to ascertain whether a State has a republican government as to identify the government, *de facto*.

In the discussion of this question I have heard a great deal said in regard to slavery. Why, sir, there is a great deal of humbug and flummery now-a-days. Why should the North require any restriction? Suppose you strike out from the constitution of every northern State all restrictions upon this subject—what would it amount to? Would there be any slaves there to disturb some conscientious nerves? I apprehend not. Take Pennsylvania or Ohio, neighboring States, and strike out the restriction from their constitutions and laws, and in all probability you will have no more slaves in those States than you have now under the restriction. The people of the South are obliged, in their section of the country, to have and employ such servants as may be had where slavery exists. It suits our social institutions, and the temper of our people, and the necessity of the case, to do so. Now, I submit to our friends upon the other side of the House, if the people from the south choose to go into northern States with their families for pleasure, amusement, or other cause, why should they not be permitted to take their necessary servants with them, and be treated hospitably, in the same manner as northern men go into southern States with their families and domestics? The law of politeness and gentility recommends this in a Government like ours, founded as it was in an era when slavery existed in every State of the Union; and I submit to the other side of the House whether they are not only violating the Constitution of the United States in its letter and spirit, but putting at defiance all those principles and rules of good breeding, civility, and courtesy, justly due from one freeman to another?

Why, Mr. Chairman, this is not so much a question of slavery and anti-slavery, so far as this Kansas matter is concerned, as it is of government or no government—whether we are

to have anarchy or the supremacy of law. Do not gentlemen concede that Congress has the power to admit new States into the Union? No one disputes this proposition. Well, suppose that, right or wrong, *per fas aut nefas*, Kansas is admitted: is not that a legitimate decision? Can an appeal be taken from it? Will not that proceeding be recognized? or will you make war upon the action of Congress as you have made war upon the Legislature of Kansas, and upon the constitutional convention? If Congress thinks proper, in the exercise of its delegated power, to admit Kansas, will you make war upon Congress, and say that Congress acted without authority? Will you not be bound and controlled by its action?

But, sir, the opponents of this measure have, in the progress of the debate, made war upon all the institutions of the country. They have made war upon Judge Lecompte, the chief justice of Kansas, a pure, upright, and accomplished judge, who has discharged all his duties with signal ability and fidelity under most difficult and embarrassing circumstances. On what ground has he been assailed? When you undertake to bring accusations against a judge, you ought to be prepared with proof to substantiate them. Where is the evidence here? None upon the face of the earth, but senseless clamor and insane abuse. It is an assault, not only on the Legislature and convention of Kansas, but on the judicial authority which derives its power from the Federal Government.

Is it not the same with regard to the Supreme Court of the United States—the highest judicial tribunal known to our Government? Does that high court command the respect of the opponents of this measure? Not at all. The same sort of assault is made upon that court. And I may here make a similar remark in regard to the members of that court that I have advanced in reference to Mr. Buchanan, when I said that Mr. Buchanan, now verging on threescore and ten, might be considered disinterested. Who compose the Supreme Court? Go into that tribunal and inquire what motives could actuate the men who wear the judicial ermine there, from the Chief Justice down. There is the honorable Roger B. Taney, the Chief Justice, a man of morality, of religion, of unimpeachable character. What motive has he for deciding in favor of the South, against the North? He is a man who must very soon, in accordance with the laws of nature, be called upon to have his actions below reviewed by the highest superhuman tribunal. What interest, I repeat, has he to decide this great question of the constitutionality or unconstitutionality of the Missouri compromise in favor of the South against the North? None, none. Why then make such an assault on the Supreme Court? Look at the other Judges. Do they all come from the South? Where was Judge Nelson? Where Judge Grier? These are Northern gentlemen, representing, if you please, northern States, imbued, somewhat possibly, with the northern views. Did not they concur in the opinion of the court? The court was agreed, with the exception of Judge McLean and Judge Curtis. Judge Curtis has since resigned his seat; and, at time of that decision, did not intend to remain on the bench. Judge Mclean has been talked of for the Presidency. If I thought proper to speculate as to the motives of gentlemen, I might have a field for doing so. But I shall not undertake to impute improper motives to these Judges. I will not do it. But I will say, consider the character of that court. See how the majority and how the minority decided You will find that the majority, consisting of gentlemen living in the North as well as in the South, adjudged this question without regard to anything but the law and the Constitution applicable to its merits, with all becoming modesty and judicial propriety, and with distinguished learning and ability.

How has it been also in the State of Massachusetts? Look at the case of Judge Loring. There was a judge who, I am told by all who knew him, was perfectly incorruptible; a man pure and undefiled. Has he not been swept by the besom of destruction, simply because he performed his duty? Alas! alas, for Massachusetts! I say, then, that this is a question involving grave considerations; whether we shall have a Government or no Government; whether law and order are to prevail, or this system of fanaticism from the North be permitted to run riot, to overturn the Supreme Court, upset all the hallowed institutions of the nation, and to inaugurate a reign of terror?

But suppose you carry out your views, and emancipate, if you please, all the slaves of the South—what will be your condition? When you have made the constitutional guarantees of the Government as but a rope of sand, what will you have to protect you at the North from the very same elements that now make war on the property in the slaves of the South? You may have a system of agrarianism there, and everything will be settled, regardless of the rights of property, of the Constitution, and of the consecrated maxims of law and order, by a wild and uncontrollable mob—popular sovereignty, if you please, with a vengeance. The very same elements that are now waging war on the property of the South will, when they cut loose from all wholesome restraints and restrictions, make war upon the conservative institutions of the North; and then there will be no safety throughout the land—your Government, founded by your revolutionary fathers, overthrown, and madness and folly attempted in its stead.

Now let me refer gentlemen of the North to the precedents set by their forefathers. How have they acted? When did you hear anything from them about the poor Indian or the negro? Who, I should like to know, has now the original, if not the best, right to the

Territory of Kansas—the border ruffian, as you term him, from Missouri, the emigrant from Massachusetts, or the poor, untutored Indian? The policy now urged, on the part of northern men, tends, if carried out to its legi imate results, to equalize the two races—the black race and the white race—not to raise the black man up, but to pull the white man down to the level of the negro. Equality of races—that is the doctrine. Take the venerable gentleman from Ohio, [Mr. GIDDINGS,] whom I desire to treat with no personal disrespect, who has been here longer than any other member on this floor, and whom I recognize as the head of the Black Republican party—and I deal with his political principles as I understand them. As I comprehend his speech, he considers the negro the equal of the white man, in natural and political rights, and just as estimable as the white man. I have heard no ground to the contrary taken by any other gentleman of that party, and I therefore place them all in the same category.

Mr. CURTIS. I hope the gentleman will not include the whole Republican party in that charge. I did not understand the gentleman from Ohio as taking that position.

Mr. STEWART. I understood him so; and those of his party who did not except to it must be considered, in all fairness, I should think, as assenting to the proposition.

Mr. CURTIS. The Republican party platform asserts no such thing, and assumes no such position.

Mr. STEWART. I understood the gentleman from Ohio to take this position—and I heard no one on his side of the House take ground to the contrary—that, under the Declaration of Independence there is no difference between the white man and the negro. And until we find the Republican party repudiate that doctrine and place itself in a different position, we have a right to consider that these are the views and policy of that party.

Mr. CURTIS. We agree with the Declaration of Independence nevertheless. The same doctrine was enunciated by Blackstone fifteen years before the Declaration of Independence was written.

Mr. STEWART. Do I understand, then, that you do not consider the negro as being as good as the white man?

Mr. CURTIS. I do not consider negroes equal to white men in this country; but I believe that they have all the natural rights of white men.

Mr. STEWART. Do I understand the gentleman to say that, under the Declaration of Independence, negroes can be citizens of the United States?

Mr. CURTIS. I did not say that they are not citizens of the United States; because, in some cases, they are citizens.

Mr. STEWART. Then, if they are citizens, why not allow them to vote?

Mr. CURTIS. I would not allow them to vote until they are capable of comprehending the duties of voters.

Mr. STEWART. Well, then, do you recognize the equality between the negro and white man?

Mr. CURTIS. I believe that they were created equal.

Mr. STEWART. All men were "created" equal! The Declaration of Independence does not say they were all *born* equal.

Mr. CURTIS. It says they were created equal.

Mr. STEWART. But it does not say they were born equal. [Laughter.] Now, sir, the idea comes, perhaps, from the venerable gentleman from Ohio, [Mr. GIDDINGS:] but I choose to place all gentlemen on that side of the House in the same class, because the course pursued by them is tending to the same result. I maintain that the gentlemen upon the other side of the House, who are making war upon the South, are seeking to establish the equality of the white and negro races in this country——

Mr. HOWARD. I hope the gentleman will except me.

Mr. CURTIS. We all wish to be excepted.

Mr. HUGHES. I would like to hear the opinion of the gentleman from Iowa on that clause of the Declaration of Independence which complains that King George III. had incited domestic insurrection in this country.

Mr. CURTIS. I approve of the whole of the Declaration of Independence.

Mr. STEWART. As you understand it, I suppose.

Mr. Chairman, there is a clause in the Constitution of the United States, which provides that, when a slave shall have escaped into another State, he shall be given up. I understand the law passed, and repassed, if you please, requires property of that description to be delivered up. But, sir, neither the law nor the constitutional provision on which it is founded is regarded. I have heard gentlemen contend that slave property was the creature of local law, and that it does not exist outside of that. Why, sir, this very provision in the Constitution of the United States was intended to place it outside and beyond that. The local authorities of Pennsylvania, for instance, may pass a law providing that when my horse escapes into that State he shall not be delivered up to me, but given to the finder; but they cannot constitutionally pass a law which will prevent my slave from being delivered up. The restriction contained in the Constitution of the United States comes to my aid in such a case; and no local law can operate to my prejudice, as is also reaffirmed by the

authority of the Supreme Court of the United States. The same principle as to such property is established by the British authorities, except in the case of "Sommersett," decided by Lord Mansfield, and has been by the English judges determined over and over again. Mansfield's decision in the case of the negro man "Sommersett" was considered an exception to the current of the common law authorities by Judge Story himself. I maintain, therefore, that slavery is recognized by the law of nations; and it is considered a violation of the international law, when the property of a citizen of one government comes within the jurisdiction of another government, to deprive him of that property without some special local law against its introduction. To refuse to recognize the same principle in the intercourse between the States is not only an assault upon the South, but is a gross violation of the Constitution, and against the settled law of the land. If there is no stop put to it, we shall, in less than half a century, necessarily become a nation of agrarians, which, may Heaven in its infinite mercy prevent! If it should turn out that we, as a people, are destined to become incapable of self-government; if it results that, when our forefathers established a government, laying down distinctly rights that should not be violated, those rights are to be cloven down or spirited away by noisy clamor, then the will and power of the strongest must prevail, and we shall be launched into a boundless sea, without chart or compass. The South, in such a tempest, will find *terra firma* as soon as the North.

Now, sir, I beg leave to refer very briefly to what some of the States at the North have done in regard to such property; which I may well commend to the grateful remembrance of those who now undertake to represent that section. Some of them, whilst they have been very eager to place restrictions upon the right of sovereignty in their neighbors, have gone to great and extraordinary lengths in the exercise of what they claim as their own peculiar and inalienable immunities. The State of New York, by a law passed the 8th of April, 1801, seems to have declared war against all strangers. Whether they designed the application to negroes alone, or to all, I am not able to say; probably to the former. The said law provides that if a stranger is entertained in the dwelling-house or out-house of any citizen for fifteen days without giving notice to the overseers of the poor, he shall pay a fine of five dollars. If such person continues above forty days, the justice may compel such stranger to be conveyed from constable to constable, until transported beyond the State; and if such person returns, the justice may direct him to be whipped by every constable into whose hands he shall come; if a man, not exceeding thirty-nine lashes; and if a *woman*, not over twenty-five lashes!

The State of Vermont, on the 10th of March, 1797, by a law, declared that every white citizen above the age of eighteen and under forty-five, should be enrolled. She seems by this to have excluded the negro—whether to exempt him *par excellence*, or discriminate against him as unworthy of citizenship, scarcely admits of question. By another act, passed November, 1801, her selectmen were empowered to remove from the State any persons who came there to reside; and if they returned without permission they were to be whipped, not exceeding ten stripes. I presume this must have been intended for the free negroes who were not citizens; white people would not be apt to travel that way, if they were included.

New Hampshire, by her act of 1808, provided that every white male citizen of the age of sixteen, and under forty, should be enrolled. I suppose, by this, she hardly considered free negroes as citizens. If regarded as citizens, it would appear unkind to deprive them of the same means of aggression and defense as her white citizens.

Rhode Island, by one of her statutes, authorized the town council to bind out to service, for two years, any free negro or mulatto who kept a disorderly house. Another section of the same statute prohibited all persons keeping house in any town from entertaining any Indian, mulatto, or negro servant or slave, under a severe penalty. Another section declares that Indians, negroes, and mulatto servants or slaves, should not be absent at night after nine o'clock; and if found violating this provision, any justice of the peace is required to cause such servant or slave to be publicly whipped, by the constable, ten stripes. Another law of that State declared that whosoever is suspected of trading with a servant or slave, and shall refuse to purge himself by oath, shall be adjudged guilty, and punished. No laws of the South, in regard to slaves, are equal in severity to this.

Connecticut, by a law passed in 1796, provides that whatsoever negro, mulatto, or Indian servant should be found wandering out of the bounds of the place to which they belong, without a pass, is to be taken up. By another section they are not to travel without a pass; and every free person shall be punished by fine for buying anything from a free negro, mulatto, or Indian servant, &c. By the constitution of this same State, of the 15th September, 1818, in the second section of the sixth article, it is provided that every white male citizen of the United States shall be an elector. Thus excluding negroes, mulattoes, and Indians.

Massachusetts, by her law of the 6th March, 1788, prohibits negroes, with a few exceptions, from remaining in the State for a longer time than two months; and if found within the State after ten days' notice, shall be whipped; and if still refusing, whipped again, &c. She also, by her act of the 15th June, 1795, provided that no person authorized to

marry shall join in marriage any white person with any negro, Indian, or mulatto, under a heavy penalty, and the marriage is declared a nullity.

In the original constitution of Ohio, by the fourth article, none but white male inhabitants had the right of suffrage.

The State of Indiana, shortly after her admission into the Union, passed a law declaring that no negro, mulatto, or Indian shall be a witness, except in pleas of the State against negroes, mulattoes, or Indians, or in civil cases where they alone shall be parties. In the District of Columbia, under the amended act of incorporation, passed the 15th of May, 1820, it was declared that none but a free male white citizen could be mayor or alderman, and power was given to prescribe the terms upon which free negroes and mulattoes may reside in the city. By the twenty-third section of the bill of rights of the proposed State of Kansas, free negroes shall not be permitted to live in that State under any circumstances. I do not suppose they mean by this to kill any that may be there, but, I take it, none are in the State. I believe a similar provision is in the Topeka State constitution.

It will be perceived, from several of the foregoing references, that the poor Indians are placed in the same category with the negroes and mulattoes. All the sympathy of the Abolitionists seems, now-a-days, to be exhausted upon the negro, to the utter and inexcusable neglect of the Indian. From all cotemporaneous history, tradition, or record, founded on constitutional or legal provisions, does any man in his sober senses believe that negroes, mulattoes, or Indians were ever designed to be citizens of the States or United States, and on a perfect equality with the white man?—that our Government intended, for them, equal rights and privileges?

In the beginning of the Government all the States were slaveholding. The Constitution and laws of the United States and of the several States demonstrate that Indians, negroes, and mulattoes have never been considered citizens. They have been excluded from voting, from serving in the militia, or from giving evidence against white persons, North as well as South, East and West. If the Declaration of Independence was intended to embrace them, why were they not, by our revolutionary ancestors, freed from slavery, emancipated, and disenthralled? The naturalization laws of 1802 restrict all negroes from becoming naturalized, else black republicans of Hayti might come over and become a part of our body-politic. I wonder if the Indians have not, upon natural principles, a better right in Kansas than the emigrants from Massachusetts or Missouri?

I take it the Supreme Court of the United States, in their recent decision in the Dred Scott case, could not, without manifest disregard of all authority, have decided that negroes were citizens of the United States. They have only, judicially, vindicated the truth of history. The constitution which was established at Topeka, and which has been the hantling of our Black Republican friends, has a provision that free negroes are not to come into the State of Kansas.

Mr. BINGHAM. Do I understand the gentleman to say that the Topeka constitution contains a clause excluding negroes from the State of Kansas?

Mr. STEWART, of Maryland. I understand that it has such a provision.*

Mr. BINGHAM. I have examined that instrument since this charge has been made, and before: and I say that it does not contain any such provision.

Mr. HUGHES. Let me set this matter right. The convention at the Big Springs, which initiated the Topeka movement, passed the following resolution:

"*Resolved*, That it is the opinion of this convention that the admission of free negroes, or mulattoes, into the Territory, or future State, of Kansas, will be productive of evil among the people of Kansas, and dangerous to the institutions of our sister State; and that we will oppose their admission into the Territory, or future State, of Kansas, now and forever."

In pursuance of that resolution, the proposition was submitted to a popular vote with the Topeka constitution, as to whether the first Legislature under that instrument should exclude free negroes or not, and it was carried. But the provision is not expressly in the Topeka constitution. Still, the adoption of that constitution would have brought into legal existence a State Legislature bound to exclude free negroes.

Mr. BINGHAM. And it never was.

[Here the hammer fell.]

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* Mr. STEWART refers, as authority, to the speech of Judge DOUGLAS, to be found in the Appendix to Congressional Globe, first session Thirty-Fourth Congress, pages 287–288, where Judge DOUGLAS, commenting upon the memorial or constitution presented by General Cass to the Senate, and known as the Topeka constitution, uses the following language:

"I have kept my eye on the history of that document, and the proceedings connected with it; and it is well known to the country that there was a clause, adopted by a separate vote of the people, and made a part of that constitution, making it a duty of the Legislature never to permit negroes (free or slave) to enter the State of Kansas—a provision similar to the one in the constitutions of Illinois and Indiana, and some other States, which have been so severely condemned and denounced by those who have become the special champions of Kansas. Look into the constitution as they furnish it, and as the Senator from Michigan has presented it here, and you will find that clause is suppressed. That important, material provision, is not to be found in the document which they bring here. I know, from the history of the transaction, that it was voted in by a majority of the persons who voted for the adoption of the Kansas constitution. Am I mistaken? I ask, was it not adopted at the same election at which the constitution of the pretended State of Kansas was adopted, as a part of the constitution?"